

# Application for the Educational Flexibility (Ed-Flex) Program



**U.S. Department of Education**  
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## **Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0737. Public reporting burden for this collection of information is estimated to average 40 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 9207 of the Every Student Succeeds Act (ESSA). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact the Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, DC 20202-3118 at [OESE.titlei-a@ed.gov](mailto:OESE.titlei-a@ed.gov).

## **Introduction**

The Educational Flexibility (Ed-Flex) program is authorized under the Education Flexibility Partnership Act of 1999 and was reauthorized by section 9207 of the Every Student Succeeds Act (ESSA). The Ed-Flex program allows the Secretary to authorize a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more the included programs for any local educational agency (LEAs), educational service agency, or school within the State.

## **Designation**

Each eligible State participating in the Ed-Flex program shall be designated an Ed-Flex Partnership State.

## **Covered Programs**

This program permits Ed-Flex States to waive requirements of the following State-administered formula grant programs:

- Title I, Part A: Improving Basic Programs Operated by LEAs (other than section 1111);
- Title I, Part C: Education of Migratory Children;
- Title I, Part D: Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-risk
- Title II, Part A: Supporting Effective Instruction
- Title IV, Part A: Student Support and Academic Enrichment Grants
- The Carl D. Perkins Career and Technical Education Act.

## **Duration of Ed-Flex**

The Secretary will approve the applications for a period of not more than five years. The Secretary may extend the authority of an Ed-Flex Partnership State if the Secretary determines that the authority of the SEA to grant waivers has been effective in enabling the State or affected LEAs, educational service agencies, or schools to carry out their State or local reform plans and to continue to meet the accountability requirements, and has improved student performance.

## **Waivers Not Authorized**

The Ed-Flex program does not authorize an SEA to waive any statutory or regulatory requirements relating to:

1. Standards, Assessments, and Accountability requirements under section 1111 of the ESEA;
2. Maintenance of effort;
3. Comparability of services;
4. Equitable participation of students and professional staff in private schools;
5. Parental participation and involvement;
6. Distribution of funds to LEAs;
7. Serving eligible school attendance areas in rank order in accordance with section 1113(a)(3) of the ESEA;
8. The selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the ESEA, except that an SEA may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in the school attendance area of such

school or who attend such school is not more than<sup>1</sup> 10 percentage points below the lowest percentage of such children for any school attendance area or school of the local educational agency that meets the requirements of such subsections;

9. Use of Federal funds to supplement, not supplant, non-Federal funds;
10. Applicable civil rights requirements; and
11. Any requirements that apply to the SEA.

An SEA may not grant any statutory or regulatory waiver unless the underlying purposes of the statutory requirements of the program for which a waiver is sought are met. Furthermore, requirements of the Individuals with Disabilities Education Act, or of any programs other than the ESEA programs referenced above and the Perkins program, may not be waived under the Ed-Flex waiver authority.

### **State Oversight**

Each Ed-Flex Partnership State must annually monitor the activities of LEA, educational service agencies, and schools receiving waivers through the Ed-Flex program.

### **Report**

Each Ed-Flex Partnership State must submit to the Department an annual report on the results of monitoring activities and the impact of the waivers on school and student performance. Each such State must include data demonstrating the degree to which progress has been made toward meeting the State's educational objectives. The data, when applicable, must include:

1. Information on the total number of waivers granted for Federal and State statutory and regulatory requirements, including the number of waivers granted for each type of waiver;
2. Information describing the effect of the waivers on the implementation of State and local educational reforms pertaining to school and student performance;
3. Information describing the relationship of the waivers to the performance of schools and students affected by the waivers; and
4. An assurance from State program managers that the data reported are reliable, complete, and accurate, as defined by the State, or a description of a plan for improving the reliability, completeness, and accuracy of such data as defined by the State.

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<sup>1</sup> 5891b(c)(1)(G) currently prohibits waivers of the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the ESEA, except that an SEA may grant a waiver to allow a school attendance area or school to participate in activities under Title I, Part A "if the percentage of children from low-income families in the school attendance area of such school or who attend such school is not less than 10 percentage points below the lowest percentage of such children for any school attendance area or school..." (emphasis added). We believe the emphasized language is an error and that this prohibition should mirror the language in ESEA section 8401(c)(10), which prohibits waivers of the selection of a school attendance area or school under sections (a) and (b) of section 1113 of the ESEA, except that the Secretary may grant a waiver to participate in activities under Title I, Part A "if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school..." (emphasis added).

## **Public Notice and Comment**

Each SEA seeking waiver authority and each LEA, educational service agency, or school seeking a waiver under the Ed-Flex program must:

1. Provide the public with adequate and efficient notice of the proposed waiver authority or waiver, consisting of a description of the agency's application for the proposed waiver authority or waiver on each agency's website, including a description of any improved student performance that is expected to result from the waiver authority or waiver;
2. Provide the opportunity for parents, educators, school administrators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver;
3. Provide the opportunity in accordance with any applicable State law specifying how the comments may be received, and how the comments may be reviewed by any member of the public; and
4. Submit the comments received with the application of the agency or school to the Secretary or the SEA, as appropriate.

## **Completing and Submitting an Application**

Each SEA must address all of the requirements identified below in its application for Ed-Flex. The Department will review applications as they are received.

Complete applications should be submitted to the Title I mailbox at [OESE.TitleI-A@ed.gov](mailto:OESE.TitleI-A@ed.gov).

## **Application Review**

Within 90 days of receipt of a complete application, the Department will issue a written decision that explains why such application has been approved or disapproved, and the process for revising and resubmitting the application for reconsideration.

The Department may approve an application only if it determines that the application demonstrates substantial promise of assisting the SEA and affected LEAs, educational service agencies, and schools within the State in carrying out comprehensive educational reform, after considering:

1. The eligibility of the State
2. The comprehensiveness and quality of the educational flexibility plan
3. The educational flexibility plan ensures accountability for the activities and goals described in such plan;
4. The degree to which the State's objectives:
  - a. Are clear and can be assessed; and
  - b. Take into account the performance of LEA, educational service agencies, or schools, and students, particularly those affected by waivers;
5. The significance of the State statutory or regulatory requirements relating to education that will be waived; and
6. The quality of the SEA's process for approving applications for waivers of Federal statutory or regulatory requirements and for monitoring and evaluating the results of such waivers.

## Cover Page

| <b>Contact Information and Signatures</b>   |                |
|---|----------------|
| SEA Contact (Name and Position):  | Telephone:     |
| Mailing Address:  | Email Address: |
| <b>By signing this document, I assure that all application contents are true and complete to the best of my knowledge, and I affirm each assurance listed at the end of the document.</b> |                |
| Authorized SEA Representative (Printed Name)  | Telephone:     |
| Signature of Authorized SEA Representative  | Date:          |

## Eligibility Information

*Please check the assurances and provide the necessary information below to demonstrate eligibility for the Ed-Flex program.*

1.  The SEA has:
  - a. Developed and implemented the challenging State academic standards, and aligned assessments, described in section 1111(b) of the ESEA, and is producing the report cards required by section 1111(h) of such Act; or
  - b. If the State has adopted new challenging State academic standards under section 1111(b)(1) of the ESEA, made substantial progress toward developing and implementing such standards and toward producing the report cards required under section 1111(h) of such Act.
  
2.  The SEA will hold LEAs, educational service agencies, and schools accountable for meeting the educational goals described in the local applications and for engaging in technical assistance and, as applicable and appropriate, implementing comprehensive support and improvement activities and targeted support and improvement activities under section 1111(d) of the ESEA.
  
3.  The SEA has waived or will waive State statutory or regulatory requirements relating to education while holding LEAs, educational service agencies, or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.
  - a. Describe the State's authority to waive State statutory or regulatory requirements relating to education (i.e. provide legal citations to relevant statute or regulation).

## Descriptions

1. Describe the process the SEA will use to evaluate applications from LEAs, educational service agencies, or schools requesting waivers of
  - A. Federal statutory or regulatory requirements; and
  - B. State statutory or regulatory requirements relating to education.
2. Describe the State statutory and regulatory requirements relating to education that the State educational agency will waive.
3. Describe the clear educational objectives the State intends to meet under the educational flexibility plan, which may include innovative methods to leverage resources to improve program efficiencies that benefit students.
4. Describe how the educational flexibility plan is coordinated with activities described in the Title I, Part A section of the SEA's approved consolidated State plan, consistent with subsections (b), (c), and (d) of section 1111 of the ESEA.
5. Describe how the SEA will evaluate (consistent with the requirements of Title I of the Elementary and Secondary Education Act of 1965) the performance of students in the schools, educational service agencies, and LEAs affected by the waivers.
6. Describe how the SEA met the requirements for Public Notice and Comment to:
  - A. Provide the public with adequate and efficient notice of the proposed waiver authority, consisting of a description of the agency's application for the proposed waiver authority, including a description of any improved student performance that is expected to result from the waiver authority.
  - B. Provide the opportunity for parents, educators, school administrators, and all other interested members of the community to comment regarding the proposed waiver authority in accordance with any applicable State law specifying how the comments may be received, and how the comments may be reviewed by any member of the public.
7. Submit as an attachment the comments received from Public Notice and Comment with the application of the SEA to the Department.